

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Martha Jean Hayes,

Plaintiff,

v.

**MEMORANDUM OPINION
AND ORDER**

The City of Brooklyn Park; Sgt. Steve
Palmquist, Officer Thomas Minster and
Officer Bruce Shores, acting in their
individual capacities as Brooklyn Park
Police Officers,

Civil No. 04-196 ADM/JSM

Defendants.

Mark J. Schneider, Esq., Rondoni & Schneider, Ltd., Golden Valley, MN, on behalf of Plaintiff.

Jon K. Iverson, Esq. and Jason M. Hiveley, Esq., Iverson Reuvers, Bloomington, MN, on behalf of the Defendants.

On May 4, 2005, Defendants became entitled to tax costs incurred in the defense of the above captioned matter after the Court granted judgment in their favor. Plaintiff and Defendants subsequently agreed to a Judgment by Confession (“the agreement”), whereby Defendants agreed not to tax costs in exchange for Plaintiff’s promise to either 1) pay \$3,000 to the Iverson Reuvers LLC Trust Account on or before July 31, 2006 as the full and final satisfaction of the costs incurred by Defendants, or alternatively 2) pay \$1,000 to the Iverson Reuvers LLC Trust Account in ten monthly installments of \$100 each on ten pre-determined dates, beginning on August 31, 2005, and ending on May 31, 2006. Ex. A [Docket No. 44]. The agreement further stated that if any of the installment payments was not paid on or before the specified due date, the installment payment option would be cancelled and Plaintiff would be required to fulfill her obligation to the Defendants by paying \$3,000. Id. As of September 8, 2005, Defendants have

not received any installment payments from Plaintiff. Hiveley Aff. [Docket No. 43]. Defendants now ask the Court to grant their Motion for Judgment Awarding Costs to Defendants [Docket No. 42] based on Plaintiff's failure to make installment payments.

Under the terms of the agreement, Plaintiff has forfeited her right to pay ten monthly installments of \$100 to Defendants as satisfaction of her obligation to pay Defendants' costs. However, the agreement also states in paragraph four that in the alternative, Plaintiff has until July 31, 2006 to pay \$3,000 to Defendants as full and final satisfaction of their costs incurred. Until July 31, 2006 Plaintiff still has the legal ability to fulfill her contractual obligation. Therefore, Defendants' motion for costs is premature.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendants' Motion for Judgment Awarding Costs to Defendants [Docket No. 42] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: November 10, 2005.